

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 23, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DERICK GEORGE FERGUSON,

Plaintiff,

v.

YAKIMA COUNTY JAIL D.O.C.,

Defendant.

No. 1:23-CV-3192-TOR

ORDER OF DISMISSAL

By Order filed February 22, 2024, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. ECF No. 14. Plaintiff Derick George Ferguson, a prisoner currently housed at the Washington State Penitentiary (“WSP”), is proceeding *pro se* and *in forma pauperis*. ECF No. 13. Defendant has not been served.

The Court found that Plaintiff had failed to present facts supporting a reasonable inference that any person amenable to suit under 42 U.S.C. § 1983 made an intentional decision to place Plaintiff in conditions that put him at risk of suffering serious harm during his pretrial incarceration. *See Gordon v. Cnty. of Orange*, 888

1 F.3d 1118, 1125 (9th Cir. 2018); ECF No. 14 at 4–9. The Court cautioned Plaintiff
2 that if he did not amend or voluntarily dismiss as directed, his complaint would be
3 dismissed for failure to state a claim upon which relief may be granted. *Id.* at 11.

4 Although granted the opportunity to amend, Plaintiff did not do so and has
5 filed nothing further in this action. The Court must assume that he has chosen to
6 abandon this litigation. Therefore, for the reasons set forth above, and in the Order
7 to Amend or Voluntarily Dismiss Complaint, ECF No. 14, the Complaint is
8 dismissed for failure to state a claim upon which relief may be granted under 28
9 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

10 Accordingly, **IT IS ORDERED:**

- 11 1. The Complaint, ECF No. 1, is **DISMISSED** for failure to state a claim upon
12 which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1),
13 but without prejudice to Plaintiff pursuing appropriate state appellate and
14 federal habeas relief.
- 15 2. Based on this Court’s reading of *Washington v. Los Angeles Cty. Sheriff’s*
16 *Dep’t*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will **NOT** count as a
17 “strike” pursuant to 28 U.S.C. § 1915(g).
- 18 3. Plaintiff’s *in forma pauperis* status is hereby **REVOKED**.
- 19 4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this
20 Order would not be taken in good faith and would lack any arguable basis in
21 law or fact.

1 The Clerk of Court is directed to enter this Order and Judgment accordingly,
2 forward copies to Plaintiff at his last known address, and **CLOSE** the file.

3 **DATED** this 23rd day of April 2024.



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6 THOMAS O. RICE
United States District Judge

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